LIBRARY
PREME COURT, U. S.

JUL 1 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]/65

JOSEPH O. ABRAMSON and his wife, SHIRLEY RITA ABRAMSON,

Petitioners,

vs.

COLONIAL OIL COMPANY, a Florida corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

SAMUEL KASSEWITZ
820 East Adams Street
Jacksonville, Florida 32202

C. HARRIS DITTMAR
1520 Barnett Bank Building
Jacksonville, Florida 32202
Counsel for Respondent

BEDELL, BEDELL, DITTMAR & SMITH
1520 Barnett Bank Building
Jacksonville, Florida 32202
Of Counsel

INDEX

	Page
Statement	1
Statute Involved	2
Question Presented	3
Argument	3
Conclusion	5

TABLE OF AUTHORITIES

Page

Cases

Borden Company v. *Federal Trade Commission* (7th Cir. 1964), 339 F.2d 953 3

Central Ice Cream Company v. *Golden Rod Ice Cream Company* (7th Cir. 1961), 287 F. 2d 265, *cert. denied*, 368 U.S. 829 4

Cream Crest - Blanding Dairies, Inc. v. *National Dairy Products Corp.* (W.D. Mich. 1965), 243 F. Supp. 331, *affirmed* (6th Cir. 1967), 370 F. 2d 332, *cert. denied*, 387 U.S. 930 4

Federal Trade Commission v. *Bunte Bros., Inc.* (1941), 312 U.S. 349 5

Food Basket, Inc. v. *Albertson's Inc.* (10th Cir. 1967), 383 F. 2d 785 3

Jones v. *Metzger Dairies, Inc.* (5th Cir. 1964), 334 F. 2d 919, *cert. denied* (1965), 379 U.S. 965 4

Lewis v. *Shell Oil Co.* (N.D. Ill. 1943), 50 F. Supp 547 3

Myers v. *Shell Oil Co.* (S.D. Cal. 1951), 96 F. Supp. 670 3

Spencer v. *Sun Oil Co.* (D. Conn. 1950), 94 F. Supp. 408 4

Standard Oil Co. v. *Federal Trade Commission* (1951), 340 U.S. 231 3

Willard Dairy Corporation v. *National Dairy Products Corporation* (6th Cir. 1962), 309 F. 2d 943, *cert. denied* (1963), 373 U.S. 934, *rehearing denied*, 375 U.S. 871 4

TABLE OF AUTHORITIES (Cont'd.)

Page

Statutes and Rules

49 Stat. 1526, 15 U.S.C. §13(a) 2, 3, 5

29 U.S.C. §§201, et seq. 4

29 U.S.C. §206(a) 4

42 U.S.C. §§2000a, et. seq. 4

42 U.S.C. §2000a (b) 4-5

Rule 19(b), Supreme Court of the United States Revised Rules 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1493

JOSEPH O. ABRAMSON and his wife, SHIRLEY RITA ABRAMSON,

Petitioners,

vs.

COLONIAL OIL COMPANY, a Florida corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF IN OPPOSITION

Statement

Respondent, Colonial Oil Company, is a Florida corporation engaged in the business of supplying petroleum products in wholesale quantities to independent dealers and of selling petroleum products at retail through service stations operated by the respondent. (R.38).

The petitioners, owners and operators of a service station in Orlando, Florida (R. 3, 6), were under contract to purchase petroleum products from Colonial Oil Company. Petitioners' amended complaint charged that during the contract

period, Colonial Oil Company, in violation of the Robinson-Patman Act [15 U.S.C. §13(a)], sold petroleum products of like grade and quality to other service stations in the Orlando area at a lower price than that at which it sold to petitioners, thereby lessening competition and injuring their business. (R. 3-7).

There is no dispute, however, but that all outlets which respondent supplied in the Orlando area, including petitioners' service station, were "supplied with petroleum products purchased by Colonial Oil Company within the state of Florida." (R. 35-36). The District Court for the Middle District of Florida granted Colonial Oil Company's motion for summary judgment on the ground that "the transactions complained of . . . . did not occur in interstate commerce, but were entirely intrastate in nature . . . ." (R. 39). This decision was affirmed by the Court of Appeals for the Fifth Circuit. (390 F.2d 873).

Statute Involved

49 Stat. 1526, 15 U.S.C. §13(a)

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States . . . and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . . ."

Question Presented

Whether the sale of petroleum products to a service station located in Orlando, Florida by a Florida corporation which purchased those petroleum products in Florida constitutes a sale in the course of interstate commerce within the meaning and application of the Robinson-Patman Act.

Argument

Petitioners are apparently seeking a review of the decision below on the ground that the Court of Appeals "has decided an important question of federal law which has not been, but should be, settled by this court." (Rule 19(b), Supreme Court of the United States Revised Rules). Yet, the decision below is based on the express language of Section 2(a) of the Robinson-Patman Act [15 U.S.C. §13(a)], which, by its terms, is limited to price discriminations by persons "engaged in commerce" in sales transactions occurring "in the course of such commerce." As stated by this Court in *Standard Oil Co.* v. *Federal Trade Commission* (1951), 340 U.S. 231, 236-237:

> "In order for the sales . . . to come under the Clayton Act, as amended by the Robinson-Patman Act, they must have been made in interstate commerce."

Thus, as in the instant case, where a product is purchased or manufactured within a state and sold within that state, there is no sale made in interstate commerce so as to give the Federal courts jurisdiction under the Robinson-Patman Act. *Food Basket, Inc.* v. *Albertson's, Inc.* (10th Cir. 1967), 383 F.2d 785; *Borden Company* v. *Federal Trade Commission* (7th Cir. 1964), 339 F.2d 953; *Myers* v. *Shell Oil Co.* (S.D. Cal. 1951), 96 F. Supp. 670; *Lewis* v. *Shell Oil Co.* (N.D. Ill.

1943), 50 F.Supp. 547. And, this Court has consistently denied petitions for certiorari seeking to review decisions so holding. *Cream Crest-Blanding Dairies, Inc.* v. *National Dairy Products Corp.* (W.D. Mich. 1965), 243 F.Supp. 331, *affirmed* (6th Cir. 1967), 370 F.2d 332, *cert. denied,* 387 U.S. 930; *Jones* v. *Metzger Dairies, Inc.* (5th Cir. 1964), 334 F.2d 919, *cert. denied* (1965), 379 U.S. 965; *Willard Dairy Corporation* v. *National Dairy Products Corporation* (6th Cir. 1962), 309 F.2d 943, *cert. denied* (1963), 373 U.S. 934, *rehearing denied,* 375 U.S. 871; *Central Ice Cream Company* v. *Golden Rod Ice Cream Company* (7th Cir. 1961), 287 F.2d 265, *cert. denied,* 368 U.S. 829.

Petitioners argue, however, that the petroleum products bought by Colonial Oil Company never came to rest within the state of Florida or lost their interstate character. Yet, when Colonial Oil Company purchased the petroleum products from Pure Oil Company and Sinclair Refining Company, the petroleum products had reached the customer for which they were intended when placed into the stream of commerce. At that point, Colonial Oil Company took complete control over the process of merchandising and the petroleum products were siphoned off the stream of interstate commerce. *Spencer* v. *Sun Oil Co.* (D. Conn. 1950), 94 F. Supp. 408.

Petitioners are asking this Court to give the term "commerce" as used in the Robinson-Patman Act the "same liberal interpretation" as given that term under the Fair Labor Standards Act [29 U.S.C. §§201, *et. seq.*] and the Civil Rights Act of 1964 [42 U.S.C. §§2000a *et. seq.*]. Yet, the interpretation of those acts is based on their express language: The Fair Labor Standards Act regulates industries "engaged in commerce or *in the production of goods for commerce*" [29 U.S.C. §206 (a)] and the Civil Rights Act of 1964 regulates "public accommodations" whose "operations *affect* commerce." 42

U.S.C. §2000a (b). Thus the treatment accorded those acts is not instructive on the scope of the Robinson-Patman Act which Congress expressly limited to transactions "in the course of [interstate] commerce."

The reach of Section 2(a) of the Robinson-Patman Act is clear from the express language of the statute. It obviously was not intended, as suggested by petitioners, to cover "all of the small businessmen 'within the United States . . .'" (Petition p. 6) and this Court should not, indeed cannot, extend the Act beyond the limits which were intended by Congress. *Federal Trade Commission* v. *Bunte Bros., Inc.* (1941), 312 U.S. 349.

Conclusion

The petition for certiorari should be denied.

Respectfully submitted,

SAMUEL KASSEWITZ
820 East Adams Street
Jacksonville, Florida 32202

C. HARRIS DITTMAR
1520 Barnett Bank Building
Jacksonville, Florida 32202
Counsel for Respondent

BEDELL, BEDELL, DITTMAR & SMITH
1520 Barnett Bank Building
Jacksonville, Florida 32202
Of Counsel